

Assembly Bill No. 1985

CHAPTER 195

An act to amend Section 21134 of the Probate Code, relating to trusts and estates.

[Approved by Governor August 27, 2012. Filed with
Secretary of State August 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1985, Silva. Trusts and estates: construction of instruments.

Existing law provides rules for the interpretation of wills, trusts, deeds, and other instruments, which are to be used as interpretive aids if the intention of the transferor is not indicated by the instrument. Under existing law, if after the execution of the instrument of gift, specifically given property is sold, or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, the transferee of the specific gift has the right to a general pecuniary gift equal to the net sale price of, or the amount of the unpaid loan encumbrance on, the property.

This bill would extend these provisions to any case in which specifically given property is encumbered by a deed of trust, mortgage, or other instrument. The bill would also apply these provisions to property that is sold by a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust. The bill would further specify that a transferee of a specific gift has the right to a general pecuniary gift equal to the net sale price of the property unreduced by the payoff of any such encumbrance or the amount of the unpaid encumbrance on the property, as well as the property itself.

Under existing law, if an eminent domain award for the taking of specifically given property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if the proceeds on fire or casualty insurance on, or recovery for injury to, specifically gifted property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the recipient of a specific gift has the right to a general pecuniary gift equal to the eminent domain award or the insurance proceeds or recovery.

This bill would extend these provisions to eminent domain awards, or insurance proceeds or recovery, paid to a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust. The bill would also specify that in those cases the recipient of the specific gift has the right to a general pecuniary gift equal to the eminent domain award or the insurance proceeds or recovery unreduced by the payoff of any encumbrance

paid on the property by the conservator, agent, or trustee, after the execution of the instrument.

The people of the State of California do enact as follows:

SECTION 1. Section 21134 of the Probate Code is amended to read:

21134. (a) Except as otherwise provided in this section, if, after the execution of the instrument of gift, specifically given property is sold, or encumbered by a deed of trust, mortgage, or other instrument, by a conservator, by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or by a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust, the transferee of the specific gift has the right to a general pecuniary gift equal to the net sale price of the property unreduced by the payoff of any such encumbrance, or the amount of the unpaid encumbrance on the property as well as the property itself.

(b) Except as otherwise provided in this section, if an eminent domain award for the taking of specifically given property is paid to a conservator, to an agent acting within the authority of a durable power of attorney for an incapacitated principal, or to a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust, or if the proceeds on fire or casualty insurance on, or recovery for injury to, specifically gifted property are paid to a conservator, to an agent acting within the authority of a durable power of attorney for an incapacitated principal, or to a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust, the recipient of the specific gift has the right to a general pecuniary gift equal to the eminent domain award or the insurance proceeds or recovery unreduced by the payoff of any encumbrance placed on the property by the conservator, agent, or trustee, after the execution of the instrument of gift.

(c) For the purpose of the references in this section to a conservator, this section does not apply if, after the sale, mortgage, condemnation, fire, or casualty, or recovery, the conservatorship is terminated and the transferor survives the termination by one year.

(d) For the purpose of the references in this section to an agent acting with the authority of a durable power of attorney for an incapacitated principal, or to a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust, (1) “incapacitated principal” or “incapacitated settlor” means a principal or settlor who is an incapacitated person, (2) no adjudication of incapacity before death is necessary, and (3) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal. However, there shall be no presumption of a settlor’s incapacity concerning the acts of a trustee.

(e) The right of the transferee of the specific gift under this section shall be reduced by any right the transferee has under Section 21133.

O